Office - Supreme Court, U.S.
FILED
JUL 10 1957
JOHN T. FEY, Clerk

No. 129

IN THE

Supreme Court of the United States

October Term 1957

PAUL DAYTON, *Petitioner*

v.

WHITNEY GILLILLAND, PEARL CARTER PACE, and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, and GEORGE M. HUMPHREY, as Secretary of the Treasury of the United States of America, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR AMICI CURIAE IN OPPOSITION

PHILIP LEVY
917 Fifteenth Street, N.W.
Washington 5, D. C.

ROBERT T. REYNOLDS
1000 National Press Building
Washington 5, D. C.

PAUL M. RHODES
1120 Tower Building
Washington 5, D. C.
Counsel for Amici Curiae

July 1957

WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON 1, D. C.

INDEX

PAGE

Interest of *amici curiae* 1

Argument:

I. The decision below correctly applied the plain language of the statute as previously construed in *de Vegvar* v. *Gillilland*, in which this Court denied petition for certiorari last Term.... 4

II. No other substantial basis is presented for granting the writ prayed 10

Conclusion 11

Citations

Cases

Bruner v. United States, 343 U.S. 112 10

Butte A. & P. Ry. Co. v. United States, 290 U.S. 127 ..... 7, 8

Comegys v. Vasse, 26 U.S. (1 Pet.) 193 ..... 5, 8

de Vegvar v. Gillilland, 228 F.2d 640, cert. den. 350 U.S. 994 ..... 3, 4, 5, 9

District of Columbia v. Eslin, 183 U.S. 62 10

Ex parte National Park Bank, 256 U.S. 131 10

Lynch v. United States, 292 U.S. 571 8

Magnum Co. v. Coty, 262 U.S. 159 3

Meade v. United States, 76 U.S. (9 Wall.) 691 5

Mellon v. Orinoco Iron Co., 266 U.S. 121 8

Peters v. Hobby, 349 U.S. 331 6

Switchmen's Union v. Mediation Board, 320 U.S. 297 8

United States v. Bank of New York Co., 296 U.S. 463 10

United States v. Binghampton Constr. Co., 347 U.S. 171 8

United States v. Ferreira, 54 U.S. (13 How.) 40 5

Williams v. Bankhead, 86 U.S. (19 Wall.) 563 10

Williams v. Heard, 140 U.S. 529 ..... 5, 8

Z & F Assets Corp. v. Hull, 311 U.S. 470, aff'g 114 F. 2d 462 (D.C. Cir.) 5, 6, 8, 9, 10, 11

PAGE

Constitution, Statutes, and Agreement

International Claims Settlement Act as amended, 64 Stat. 12, 67 Stat. 506, 69 Stat. 562, 22 U.S.C. §§ 1621-1641:

§4(h) 2, 8
§4(j) 6
§6 10
§7(a) 2
§7(c) 2, 9, 10
§7(e) 9
§7(f) 9
§8(a) 8
§8(b) 8
§8(c) 2
§§202-213 8
§302 8
§309 8
§314 11

Settlement of War Claims Act of 1928, §4(a), 45 Stat. 254 8

U.S. Const. Art. III. § 1 9

United States — Yugoslav Claims Agreement, 62 Stat. 2658: 3
Art. 3 7
Art. 8 9

Miscellaneous

Annual Report of the Secretary of the Treasury (fiscal year ending June 30, 1956) p. 106 2

Borchard, Diplomatic Protection of Citizens Abroad (1915) pp. 356-360 8

Cong. Rec. vol. 95 p. 8840 6
pp. 8853-8855 6

Hackworth, Digest of International Law (1943) vol. 5, pp. 802-804 11

H. Doc. 381, 83rd Cong. 2d Sess. p. 2 10

H. Rep. 1693, 81st Cong. 2d Sess. p. 2 6

PAGE

Hearings on Foreign Claims Settlement Commission, H. Comm. on Foreign Affairs, 84th Cong. 1st Sess. p. 111 7
Hyde, International Law (2d ed. 1945) vol. 2 pp. 890-891 8
Oppenheim's International Law (7th ed. by Lauterpacht, 1948) vol. 1, pp. 314-315 11
Petition for Certiorari, de Vegvar v. Gillilland, No. 654, Oct. Term 1955 ..... 4, 5
S. Rep. 800, 80th Cong. 1st Sess.:
p. 2 6
p. 10 7
p. 11 7
S. Rep. 1050, 84th Cong. 1st Sess. p. 9 11
Settlement of Claims by the Foreign Claims Settlement Commission (GPO 1956):
pp. 17-18 2
pp. 303-330 2
p. 344 2
Whiteman, Damages in International Law (1937) pp. 275, 2046-2048 8

IN THE

Supreme Court of the United States

October Term 1956

No. 1004

PAUL DAYTON, *Petitioner*

v.

WHITNEY GILLILLAND, PEARL CARTER PACE, and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, and GEORGE M. HUMPHREY, as Secretary of the Treasury of the United States of America, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR AMICI CURIAE IN OPPOSITION

INTEREST OF AMICI CURIAE

Pursuant to Rule 42 of the Revised Rules of this Court, Francis Price, Jr. and Dennis G. Karzag (executors of the estate of William Zimdin), Socony Mobil Oil Company, Inc., and Paul Zoffman, by their respective attorneys, respectfully submit this brief *amici curiae* in opposition to the petition for certiorari. Written consent has been given by counsel for the petitioner and by the Solicitor General, counsel for respondents.

The *amici curiae* are holders of awards duly made by respondents Gillilland *et al.*, constituting the Foreign Claims Settlement Commission of the United States, and certified to respondent Humphrey, Secretary of the Treasury, for payment from the Yugoslav Claims Fund in the

United States Treasury pursuant to the International Claims Settlement Act of 1949. 64 Stat. 12, 67 Stat. 506, 22 U.S.C. § 1621 (R. 31a-43a). In the five-year period ending December 31, 1954, the Commission had received 1554 Yugoslav claims totaling $149,344,250, denied 678 claims *in toto*, and certified to the Treasury 876 awards totaling $18,817,905 (plus interest from the dates of expropriation to August 21, 1948). Respondent Humphrey is "authorized and directed" to distribute the Fund, originally totaling $17,000,000, "only to" the awardholders (or their successors in interest) certified by the Commission. §§7(a), 7(c), 8(c). To date, respondent Humphrey has paid the full principal of awards of $1000 or less; and has distributed 80% of the principal of the 646 awards exceeding $1000; leaving approximately $1,750,000 to be distributed to such awardholders (without interest) pursuant to the Act. See *Settlement of Claims by the Foreign Claims Settlement Commission* (G.P.O. 1956) pp. 17-18, 303-330, 344; *Annual Report of the Secretary of the Treasury* (fiscal year ending June 30, 1956), p. 106.

Petitioner's claim for $1,504,625 was denied by the Commission after hearing, on the ground that petitioner was not a national of the United States on the date of actual "taking" by Yugoslav authorities of petitioner's property in Yugoslavia (R. 52a-63a). Petitioner asked the District Court to nullify this adverse decision, to order the Commission to reconsider the claim, and pending such reconsideration to restrain respondent Humphrey from making full distribution to the holders of 646 awards the validity of which petitioner does not question (R. 22a-23a).

The two courts below correctly ruled that this suit is precluded by Section 4(h) of the Act, which provides that "the action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by

the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise" (R. 47a-48a). On all material points the instant petition and record parallel those in *de Vegvar* v. *Gilliland et al*, 228 F.2d 640, in which this Court denied certiorari last Term. 350 U.S. 994. Following such denial, the District Court dismissed the instant suit in May 1956, and the court below denied petitioner's motion for a restraining order pending appeal and also declined reconsideration *en banc* (Pet. 3-4). Thereupon respondent Humphrey made further distributions to the awardholders in June 1956, reducing the Fund to substantially its present balance. Since the final decision below, 242 F.2d 227, petitioner has not even attempted to overcome the "heavy burden" resting upon him in the circumstances by seeking a stay order restraining further payments from the Fund. *Cf. Magnum Co.* v. *Coty*, 262 U.S. 159, 163-164.

The Act and the United States-Yugoslav Claims Agreement (62 Stat. 2658) (R. 44a-51a), were designed to implement American foreign policy to secure prompt, adequate and effective compensation for eligible nationals of the United States; i.e., the awardholders, whose property was expropriated by Yugoslavia more than ten years ago. Even the prompt and full distribution of the entire Fund early in 1955, as envisaged by Congress, would have afforded only partial compensation for such long-standing deprivations of property rights by Yugoslavia. The pendency of litigation by disappointed claimants thus creates the very situation that Congress expressly prohibited. As summarized in the *de Vegvar* opinion by the court below: "Congress knew that if each claimant could take his claim to the courts the Fund could not safely be distributed until every last litigation had been terminated. Considerations of both domestic and foreign policy called for the prompt distribution of the Fund and the ending of disputes between Yugoslavia and the United States". 228 F.2d at 842.

ARGUMENT

I

The Decision Below Correctly Applied the Plain Language of the Statute As Previously Construed In *De Vegvar v. Gillilland*, In Which This Court Denied Petition for Certiorari Last Term.

The two courts below correctly ruled that judicial review was precluded by Section 4(h) of the Act as construed in *de Vegvar* v. *Gillilland et al*, 228 F.2d 640, in which this Court denied petition for certiorari on March 26, 1956. 350 U.S. 994. As explained in *de Vegvar*, "What happened was that Yugoslavia took plaintiff's property; the United States undertook to obtain moneys from Yugoslavia from which certain sorts of claims of United States nationals could be satisfied; a Commission was established to deal finally with such matters; plaintiff made a claim and was determined not to be in the class entitled to participate. . . . Plaintiff is barred by the statutory prohibition". 228 F.2d at 642.

Petitioner, like *de Vegvar*, concedes that his suit arises "under" the Act (R. 2a, 15a), and that the Commission's adverse decision "is not . . . appealable or reviewable" thereunder (R. 7a, 22a). Contrary to petitioner's argument that this suit differs from *de Vegvar* (Pet. 10-11), the petition for certiorari in the latter case also contended that "the statute created or recognized certain rights in this class of citizen-claimants" (called "property rights"), and that petition also asserted "a claim to compensation as of right—even if the right is statutory in origin—for loss of property taken by the (foreign) sovereign which has now furnished the compensatory fund". See Petition for Certiorari in No. 654, October Term 1955, pp. 15-16. Petitioner's arguments parallel those in *de Vegvar* at all other material points;

namely, that the Commission's decision was "arbitrary and capricious" (*id.* p. 13); that the petition sought judicial "intervention" rather than "review" (*id.* pp. 15-18); that the Yugoslav decrees of "taking" relied upon by the Commission were null and void under Yugoslav law (*id.*, p. 8);[1] and that the denial of review allegedly gave rise to constitutional questions. *Id.* pp. 17-18.

Far from being novel or arbitrary, as petitioner suggests, the Act merely makes explicit the traditional non-reviewability of certifications by domestic or mixed commissions as to the validity or amount of international claims.[2] Congress framed the non-reviewability provisions of the Act in the light of this traditional policy and prac-

---

[1] The opinion below in *de Vegvar* stated: "Appellant [Mrs. de Vegvar] says that the Commission failed to examine and give effect to the Yugoslav statute relating to confiscation of property, and that this was a failure by the Commission to exercise the jurisdiction conferred on it by the Act. She further says that the refusal by the Commission to receive the evidence offered by her, to the effect that the decree of the Yugoslav court which purported to confiscate her property was null and void under the Constitution and laws of Yugoslavia, was a failure to apply the required standard of international law, and was an arbitrary act in excess of the jurisdiction of the Commission". 228 F. 2d at 841-842.

[2] The commission had "full power and authority to . . . decide upon the amount and validity of the asserted claims. . . . A rejected claim cannot be brought again under review in any judicial tribunal". *Comegys* v. *Vasse*, 26 U.S. (1 Pet.) 193, 212. A decision against a claimant "cannot afterwards be disturbed by an appeal to this or any other court, or in any other way, without the authority of an act of Congress". *United States* v. *Ferreira*, 54 U.S. (13 How.) 40, 47. A decision of the 'court of commissioners' is "final upon all parties, as respects the validity of the claim, and the amount to be paid in satisfaction of it". *Williams* v. *Heard*, 140 U.S. 529, 539. "We are of the opinion that for the purpose of payment under the statute the certificate [of the Secretary of State] must be deemed to be conclusive". *Z. & F. Assets Corp.* v. *Hull*, 311 U.S. 470, 489. Decisions of such commissions concerning their "jurisdiction" over particular claims are non-reviewable in the courts. *Id.*, 311 U.S. at 488, 489; *Meade* v. *United States*, 76 U.S. (9 Wall.) 691, 719, 725.

tice, particularly as expressed in *Z. & F. Assets Corp.* v. *Hull*, 311 U.S. 470. Petitioner "must claim solely by reason of [his] interest in the fund created by the statute and under its terms [he is] not entitled to complain". *Id.*, 311 U.S. at 489.

In the legislative debates, Congress had underscored the Congressional purpose simply to afford all claimants an opportunity to present their claims against Yugoslavia for final determination by the Commission. In an extended discussion on the House floor, Congressman Ribicoff, who had reported the bill from the House Committee on Foreign Affairs, stressed that the finality clause in Section 4(b) and the preclusion of judicial review in Section 4(h) "mean precisely what they say" (95 Cong. Rec. 8840), and had been designed to prevent litigation delays "where one claimant with one appeal could tie up the settlement of 1,500 claims". *Id.*, p. 8854.[3] The House specifically rejected an amendment to eliminate the provisions precluding judicial review, 95 Cong. Rec. 8853-8855; and the Senate confirmed this result by excluding the application of the Administrative Procedure Act where, as here, it was "otherwise specifically provided by this Act". § 4(j); S.Rep. 800, 80th Cong. 1st Sess. p. 2; H.Rep. 1693, 81st Cong. 2d Sess. p. 2.

Unlike the circumstances in such cases as *Peters* v. *Hobby*, 349 U.S. 331, petitioner does not question that the Commission had power to hear and decide his case. Indeed, the complaint concedes that "pursuant to the provisions of the Act, the Commission was given jurisdiction to receive, examine, adjudicate, and render final

---

[3] Congressman Ribicoff explained that all the prospective claimants who appeared before the Committee had favored the finality provisions because "we are setting up here an expeditious handling of claims. We know that if you take these claims and get them involved in continuous court controversy, it will be many, many years before these claims are settled". 95 Cong. Rec. 8854. See also 95 Cong. Rec. 8840.

decisions with respect to claims of nationals of the United States included within the terms of the Yugoslav Claims Agreement" (R. 2a, 162). Petitioner essentially contends that the Commission erred in exercising its admitted authority, and prays that this authority be re-exercised in petitioner's favor (R. 8a, 22a). Manifestly, "under this legislation, whether a claimant seeking 'relief has the requisite standing is a question going to the merits and its determination is an exercise of jurisdiction' ". *Butte A. & P. Ry. Co. v. United States*, 290 U.S. 127, 141-142. The issue of "other taking", on which petitioner's claim turned (R. 54a, 56a-57a), was plainly within the Commission's exclusive and non-reviewable authority under the Act.[4] Petitioner's argument really is that the Commission had "jurisdiction" only to allow his claim.

---

[4] "It is known that some property owners were effectively deprived of property rights by Yugoslav authorities without formal nationalization. 'Nationalization' under Yugoslav law called for compensation to be paid in accordance with Yugoslav law. Property and property rights have also been confiscated without compensation by Yugoslav authorities, placed under informal or formal sequestration, held under administration, or put in the possession or control of others. *Actual transfer of title in a normal sense may not have occurred, yet holders of property may have been effectively deprived of ownership rights.* Since the Yugoslav agreement covers the period of September 1, 1939, to July 19, 1948, the intent was undoubtedly to encompass all actual deprivation of property . . . *It is believed that consistent with the intent of the Yugoslav agreement, the specific application of 'other taking' should be left to the Commission.* Prejudgment, either administrative or legislative, should be avoided in justice to all claimants". S.Rep. 800, Committee on Foreign Relations, 81st Cong. 1st Sess., p. 10 [italics added].

The Commission denied 195 claims totaling $40,271,718 on the ground that the claimant was not a national of the United States on the date of actual "taking" by Yugoslavia. See *Hearings on Foreign Claims Settlement Commission*, H. Comm. on Foreign Affairs, 84th Cong. 1st Sess. (1955) p. 111. All such claims "not settled were not discharged and remain unsettled obligations of Yugoslavia" (S.Rep. 800, 81st Cong. 1st Sess. p. 11), under Article 3 of the Agreement (R. 43a).

Settlement of Yugoslav claims involves no question of individual liberty, no penalty or coercion, and no deprivation of "property rights". Petitioner is confusing the instant situation, where a purported claim has been considered and rejected, with suits to vindicate derivative rights in *awards* duly made and certified (*Comegys* v. *Vasse*, *supra*) or to compel the Secretary of the Treasury to pay such awards pursuant to his ministerial duty. *Mellon* v. *Orinoco Iron Co.*, 226 U.S. 121. It is settled law that a disappointed claimant in petitioner's position has no strict legal or equitable rights in this or similar governmentally-created funds[5] concerning numerous claims against foreign governments. See *Williams* v. *Heard*, 140 U.S. 529, 537-538; *Z. & F. Assets Corp.* v. *Hull*, 114 F.2d 462, 472-475, aff'd 311 U.S. 470; *Whiteman, Damages in International Law* (1937) pp. 275, 2046-2048; *Borchard, Diplomatic Protection of Citizens Abroad* (1915) pp. 356-360; 2 *Hyde, International Law* (2d ed., 1945) pp. 890-891. The nature and provisions of the International Claims Settlement Act particularly show that Congress never intended to recognize or create any enforceable "property rights" in disappointed claimants.[6] In addition to Section 4(h), the

---

[5] E.g., the instant Act (as amended 69 Stat. 562) §§ 8(a), 8(b) (claims against Yugoslavia and other Governments making *en bloc* settlements for nationalized property); §§ 202-213, 302, 309 (various claims against Bulgaria, Hungary, Rumania); §§ 302, 309 (war claims against Italy); §§ 302, 309 (various claims against Soviet Russia). See also Settlement of War Claims Act of 1928, § 4(a), 45 Stat. 254 (war claims against Germany), involved in the *Z. & F. Assets* case, *supra*.

[6] See also *Butte A. & P. Ry. Co.* v. *United States*, 290 U.S. 127, 141-143; *Lynch* v. *United States*, 292 U.S. 571, 587; *Switchmen's Union* v. *Mediation Board*, 320 U.S. 297, 305; *United States* v. *Binghamton Construction Co.*, 347 U.S. 171, 176-177.

Act expressly declares that nothing therein "shall be construed as the assumption of any liability by the United States for the payment or satisfaction . . . of any claim on behalf of any national of the United States against any foreign government" (§ 7(f)); that respondent Humphrey shall distribute the Fund "only to" those claimants receiving awards certified by the Commission (§ 7(c); *Z. & F. Assets Corp.* v. *Hull, supra*); and that "any person who makes application for any such payment shall be held to have consented to all the provisions of this Act". § 7(e). These provisions effectuate familiar law that the espousal of claims on the diplomatic level, and the certification of awards to eligible primary claimants, are matters traditionally committed to executive discretion. See authorities *supra*, p. 8.

Petitioner sought to raise constitutional issues in the District Court only after this Court had denied the petition for certiorari in *de Vegvar* (R. 14a-23a, 27a-30a). In any event "there can be no doubt of the constitutional authority of Congress" to give finality to the decisions of the Commission in granting or denying awards. "Congress had complete power to decide what payments should be made from [the Fund] and to attach such conditions as it saw fit". *Z. & F. Assets Corp.* v. *Hull, supra*, 311 U.S. at 486. Such statutory provisions limiting the jurisdiction of the District Court are clearly sanctioned by Article III § 1 of the U.S. Constitution. Accordingly, here as in *Z. & F. Assets*[7] and *de Vegvar* (228 F.2d at 642), this Court need not consider the effect of the Treaty Power.[8]

---

[7] 311 U.S. at 489 (majority opinion by Hughes, C.J.). The concurring opinion of Black and Douglas, JJ. went further, stating that no justiciable controversy was presented. 311 U.S. at 490-493.

[8] Since the District Court had no jurisdiction over the subject matter in any event, the courts below did not consider other and separate jurisdictional grounds for affirming the judgment of

II

No Other Substantial Basis Is Presented For Granting the Writ Prayed

There is no conflict among the circuits; and the petition presents no important issue of Federal law which is not clearly foreclosed by the statutory language and the Commission findings (R. 52a-63a), or clearly decided in long-standing precedents of this Court.

The Commission's current authority to settle claims against other countries, referred to by petitioner (Pet. 7-8), simply reinforces the public interest in finality of settlements and prompt and orderly distribution of claims funds. The Commission itself was reorganized in 1954 in order to "permit the retention and use of the best experience gained during the last several years in the field of claims settlement", and to avoid the notorious delays of some *ad hoc* agencies under past claims settlements. H.Doc. 381, 83d Cong. 2d Sess. p. 2. In the 1955 amendments, authorizing settlement of various claims dating from the first and second world wars (69 Stat. 562, 22 U.S.C. § 1631; *supra* note 5), Congress again expressly precluded judicial review of Commission decisions granting or denying awards. § 314. Congress also reiterated the long-standing principle of international law

---

dismissal; namely that respondent Humphrey may not be enjoined from making payments from the Fund to the awardees certified by the Commission, as directed by Section 7 of the Act, *Z. & F. Assets Corp. et al* v. *Hull, Morgenthau, et al, supra;* that the Commission's authority to take further action on petitioner's claim expired on December 31, 1954, under Section 6 of the Act as amended; *cf. District of Columbia* v. *Eslin*, 183 U.S. 62; *Ex Parte National Park Bank*, 256 U.S. 131; *Bruner* v. *United States*, 343 U.S. 112; and that petitioner failed to join the awardees as indispensable parties. *Williams* v. *Bankhead*, 86 U.S. (19 Wall.) 563; *United States* v. *Bank of New York Co.*, 296 U.S. 463, 480.

here applied by the Commission, requiring the claimant to be a national of the United States on the date of actual loss. See S. Rep. 1050, Committee on Foreign Relations, 84th Cong. 1st Sess. p. 9; 5 *Hackworth, Digest of International Law* (1943) pp. 802-804; 1 *Oppenheim's International Law* (7th ed. by Lauterpacht, 1948) pp. 314-315.

Petitioner's argument, if adopted, would flood the courts with litigation concerning the eligibility of claimants and claims against Yugoslavia and other foreign governments, contrary to traditional national policy in the settlement of such claims.

CONCLUSION

The decision below follows the clear mandate of Congress and the applicable precedents of this Court. The petition presents no substantial basis for review by writ of certiorari, and accordingly should be denied.

Respectfully submitted.

PHILIP LEVY
917 Fifteenth Street, N.W.
Washington 5, D. C.

ROBERT T. REYNOLDS
1000 National Press Building
Washington 5, D. C.

PAUL M. RHODES
1120 Tower Building
Washington 5, D. C.
Counsel for Amici Curiae.